2004

Beiwei Li v. Shuyu Zhang, Enterprise Rent-A-Car Company of Utah, Geico Indemnity Company : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

BEIWEI LI, Personal Representative of the Estate of Beizhong Li, Deceased,

Plaintiff and Appellant,

v.

SHUYU ZHANG, ENTERPRISE RENT-A-CAR COMPANY OF UTAH, a Utah Corporation, GEICO INDEMNITY COMPANY, a Maryland corporation and JOHN DOE, whose true name is not known,

Defendants and Appellees.

BRIEF OF APPELLEE ENTERPRISE RENT-A-CAR

Appellate No. 20040051-CA

District Ct. No. 020906593

Appeal from the
Third Judicial District Court, Salt Lake County,
Honorable Timothy R. Hanson

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BEIWEI LI, Personal Representative of the Estate of Beizhong Li, Deceased, Plaintiff and Appellant, v. SHUYU ZHANG, ENTERPRISE RENT-A-CAR COMPANY OF UTAH, a Utah Corporation, GEICO INDEMNITY COMPANY, a Maryland corporation and JOHN DOE, whose true name is not known, Defendants and Appellees.	**BRIEF OF APPELLEE ENTERPRISE RENT-A-CAR** Appellate No. 20040051-CA District Ct. No. 020906593

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Defendant and Appellee, Enterprise Rent-A-Car ("Enterprise") respectfully submits the following Brief of Appellee Enterprise Rent-A-Car. References to statutes will be to the Utah Code Annotated unless otherwise indicated.

I. JURISDICTION

The Utah Court of Appeals has jurisdiction over this appeal pursuant to § 78-2a-3(2)(j).

II. STATEMENT OF ISSUES

A. Statement of the Issues

1. Does the plain language of §31A-22-314(1) require Enterprise to provide coverage for Plaintiff when there was other "valid and collectible insurance"?

   a. Standard of Review: Correctness. Woodhaven Apartments v. Washington, 942 P.2d 918 (Utah 1997).

   b. Record: pages 38-96

III. DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES ORDINANCES, AND RULES

1. §31A-22-314(1) reads:

   (1) A rental company shall provide its renters with primary coverage meeting the requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act, unless there is other valid and collectible insurance coverage.

2. §41-12a-301(2)(a) reads:

   (a) every resident owner of a motor vehicle shall maintain owner's or operator's security in effect at any time that the motor vehicle is operated on a highway within the state;

IV. STATEMENT OF THE CASE

Enterprise Rent-A-Car rented a vehicle to Beizhong Li. At the time of the rental, Mr. Li had

in force a valid and collectible insurance policy with uninsured and underinsured motorist coverage from GEICO. Defendant Shuyu Zhang had in force a valid and collectible policy of insurance with liability coverage with American Commerce Insurance Company. ("American"). On July 21, 2000 Mr. Li and Defendant Shuyu Zhang were involved in a motor vehicle accident which resulted in the death of Mr. Li. Mr. Zhang was driving the vehicle at the time of the accident.

The Estate of Mr. Li settled for the policy limit of the American policy (i.e. $100,000), and for the full coverage of the GEICO uninsured and underinsured motorist benefits. The Estate of Mr. Li requested from Enterprise additional liability coverage under the theory that §31A-22-314(1) required Enterprise to provide an additional $25,000 in "secondary" or "excess" liability coverage despite the fact that there was other "valid and collectible insurance" available to Mr. Li's estate. Cross motions for summary judgment were filed addressing this issue and the Honorable Timothy Hansen granted Enterprise's motion and dismissed Enterprise from the lawsuit. Plaintiff has set forth the applicable language of Judge Hansen's ruling.

V. STATEMENT OF FACTS

1. On July 20, 2000, Beizhong Li executed a Rental Agreement with Enterprise for the rental of a Ford Taurus. (R. at 42, 58).

2. The Rental Agreement specifically offered Mr. Li the option of personal accident coverage and supplemental liability coverage. Mr. Li initialed the boxes on the Rental Agreement declining both coverages. (R. at 59).

3. Mr. Li further explicitly accepted responsibility for any damage to the vehicle. (R. at 59).

4. At the time of the motor vehicle accident, Mr. Li had in force a policy of uninsured

motorist coverage with GEICO Indemnity Company with a limit of $100,000 applicable to this accident. Mr. Li also had in force a policy of underinsured motorist benefits from GEICO with a limit of $100,000 applicable to this accident. (R. at 59).

5. Mr. Li settled with GEICO for the full value of the uninsured motorist benefits and for the full value of the underinsured motorist benefits. (Appellant's Brief at 5).

6. In addition to the GEICO policy, the driver of the Taurus, Shuyu Zhang, had in force a liability policy with American with a limit of $100,000. (R. at 43, 59).

7. Subsequent to executing the Rental Agreement, Mr. Li was tragically killed in a motor vehicle accident while riding as a passenger in the vehicle rented from Enterprise. At the time of the accident, Mr. Shuyu Zhang was operating the vehicle. (R. at 42, 52-55, 59).

8. Following the accident, the Estate of Beizhong Li settled with American for the full value of the liability limit. (Appellant's Brief at 5).

9. Enterprise is self insured. (R. at 43, 50).

VI. SUMMARY OF ARGUMENTS

The plain language of §31A-22-314(1) exempts Enterprise from providing the coverage required in §41-12a-301(2)(a) because there was "other valid or collectible insurance".

VII. ARGUMENT

POINT ONE:

§31A-22-314(1) Exempts Enterprise from Providing Liability Coverage in this Case Because There was "Other Valid or Collectible Insurance" available to Mr. Li

Enterprise does not dispute that §41-12a-301(2)(a) requires owner's or operator's of motor vehicles from providing liability coverage. Enterprise does not dispute that Shuyu Zhang is an insured

under the definition of §31A-22-303(1)(a)(ii)(A). The only dispute is whether the plain language of §31A-22-314(1) provides an exception to this rule when there is "other valid or collectible insurance".

In the present case, there is no dispute that there was, in fact, "other valid or collectible insurance". Mr. Li had UM and UIM coverage under his own policy with GEICO and Mr. Zhang had a valid policy with American with liability coverage. In fact, the Estate of Mr. Li has collected $300,000 (collectively) from these three policies. Thus, there can be no dispute about whether there was "other valid or collectible insurance".

The dispute in this case centers around the interpretation of the word "primary" in §31A-22-314(1). Plaintiff contends that the inclusion of this word in this section necessarily means that Enterprise is not excused from *all* obligations to provide liability coverage when there is "other valid or collectible insurance" only that it relieves Enterprise of the obligation to provide "primary" coverage. Enterprise, on the other hand, takes the position that the plain language of this statute is clear, that its obligation to provide liability coverage exists only when there is no other "valid or collectible insurance." This was the issue presented to the trial court and is the only issue presented to the appellate court.

When interpreting a statute, Utah courts first look to the plain language of the statute. If the meaning of the statute is clear from the plain language of the statute, then there is no need to look any further. In this case, the plain meaning of the statute is clear when the provision is read in its entirety. The meaning posited by Enterprise is that a rental company has no obligation to provide liability coverage when the renter has "other valid or collectible insurance." In State v. Coonce, 36 P.3d 533, 537 (Utah App. 2001) (citations omitted) this Court stated:

> A fundamental rule of statutory construction is that statutes are to be construed according to their plain language. Only if the language of a statute is ambiguous do we resort to other modes of construction. Furthermore, unambiguous language may not be interpreted to contradict its plain language. A corollary of this rule is that a "statutory term should be interpreted and applied according to its usually accepted meaning, where the ordinary meaning of the term results in an application that is neither unreasonably confused, inoperable, nor in blatant contradiction of the express purpose of the statute".

It has always been the position of Enterprise that the plain language of this statute was intended to ensure that rental companies complied with Title 41, Chapter 12a and ensured *minimum* liability coverage on all of their vehicles. Thus, if a person rents a vehicle owned by Enterprise and they do not have "valid or collectible insurance", then Enterprise would be required under the statute to step in and provide primary liability coverage. However, when there is other valid and collectible insurance available to the renter, then this statutes exempts Enterprise (and other rental agencies) from the need to provide minimum liability limits. This interpretation furthers the fundamental requirement of Title 41, Chapter 12a by ensuring that all vehicles on Utah roads – even those owned by rental agencies – have the minimum requirements for liability insurance.

Plaintiff's interpretation of this statute, however, writes unintended meaning and language into the statute. In fact, Plaintiff's meaning runs afoul of the plain language of the statute and requires rental companies to provide coverage *despite* the fact that "other valid or collectible insurance" is available. The use of the word"unless" in this statute suggests Plaintiff's intended meaning runs afoul of the statute; this word is clearly intended to excuse Enterprise from providing liability coverage when there is other valid or collectible insurance. According to Coonce, so long as the meaning posited by Enterprise is not "unreasonably confused", "inoperable" or a "blatant contradiction" of the express purpose of the statute, then there is no need to add the meaning and language suggested by

Plaintiff.

Courts must "avoid adding to or deleting from statutory language, unless absolutely necessary to make it a rational statute." Luckau v. Board of Reg., 840 P.2d 811, 815 (Utah App. 1992). In the present case, Plaintiff's suggested meaning would require this court to add meaning and language. The statute does not employ the words "secondary" or "excess" and yet Plaintiff wants this court to interpret this statute to require Enterprise to assume a "secondary" or "excess" position even when there is other insurance. This additional language and meaning is inappropriate because, according to Luckau, it is not "absolutely necessary to make it a rational statute." The trial Court agreed with this proposition and was unwilling to add the meaning and language suggested by Plaintiff. If the legislature intended rental agencies to assume a "secondary" or "excess" position, it would have been easy for the legislature to make that responsibility clear by adding a few additional words to this provision.

§41-12a-301(2)(a) clearly requires Enterprise to provide liability coverage, but §31A-22-314(1) carves out an exception for rental companies, like Enterprise, when there is other insurance available. This meaning is consistent with the purpose of Title 41, Chapter 12a in that it ensures that every vehicle on Utah roads has the required minimum amounts of liability coverage. The statute is clear on its face and there is no need to add meaning or language to make it rational.

Plaintiff's position is that this statute is ambiguous and, as a result, a resort to legislative history is needed and appropriate. See State v. Germonto, 2003 Utah App 217 ¶7, 73 P.2d 978 ("We consider other methods of statutory construction **only** when a statute is ambiguous.")(Emphasis added) (citations omitted). However, even if the statute was ambiguous and resort to legislative history is needed, Plaintiff has still not shown that the legislature intended rental companies to be

"secondary" or "excess" carriers. In fact, the legislative history Plaintiff cited only shows – if anything– that the legislature intended to use the word "primary". This legislative history is absolutely silent regarding whether the legislature intended rental agencies to assume "secondary" or "excess" positions. In fact, there is nothing in the language of the cited legislative history to suggest that our legislature intended rental agencies to assume "secondary", "excess", or "UIM-like" obligations. The legislative history cited by Plaintiff/Appellant does nothing more than illustrate that the word "primary" was added to the statute. However, that does not necessarily lead to the conclusion suggested by Plaintiff.

Enterprise does not dispute that the word "primary" should be given meaning; however, Enterprise disputes Plaintiff's contention that the *only* meaning attached to this word is that Enterprise is obliged to provide "secondary" or "excess" coverage.

Plaintiff is suggesting that the **only** conclusion that can be reached from the use of this word is that the legislature intended rental companies to assume a "secondary" or "excess" position when other valid or collectible insurance is insufficient to compensate an injured party. This argument is based on the unfounded assumption that because the legislature used the word "primary" a rental company is not excused from all coverage, only that they need not provide "primary" coverage. Plaintiff's position is flawed. First, if the legislature truly intended to simply subordinate the rental company's obligation to a "secondary" position, then they would have made that clear in the statute. The legislature would have included language explaining that when there is insufficient coverage from the primary carrier, then the rental company would have to step and provide "secondary" coverage. This could have been accomplished by adding a few additional words to the statute. The legislature did not do that here. Plaintiff is asking this Court to improperly add language and meaning to this

statute.

Second, what Plaintiff is asking this court to do is re-write the insurance code. In essence, Plaintiff is asking this Court to require Enterprise to act as a de facto underinsured motorist carrier. Plaintiff's argument is that because there is insufficient liability coverage from American, Enterprise should step in and pay (up to the state required minimum of $25,000) the deficiency. This is the very purpose of UIM coverage. Again, if the legislature intended rental companies to have UIM-like obligations, they would have made this obligation clear, either in this provision or another provision in the statute.

Third, the "legislative history" cited by Plaintiff does not *necessarily* lead one to the conclusion posited by Plaintiff. The word "primary" has other, more reasonable meanings when read in the proper context. Plaintiff's argument is that "primary" and "other insurance" are related, but that does not necessarily mean that the legislature intended rental companies to have "secondary" liability under these circumstances. The word "primary" has other, more reasonable meanings when this statute is read in the proper context.

For example, the legislature could have used the term "primary coverage" in reference to a situation where there was other valid or collectible insurance available, but that coverage did not meet the statutory minimum of $25,000. Arguably, the rental company would be obliged in that situation to provide "primary" coverage sufficient to satisfy Title 41, Chapter 12a. Supposing, that the liability limit on the American policy had been $15,000 rather than $100,000, Enterprise may have been obliged to step in and provide "primary" coverage sufficient to meet the $25,000 minimum required by Title 41, Chapter 12a. Under this assumed set of facts, Enterprise would have had a "primary" obligation to the amount of the $10,000 shortfall. Such a scenario suggests that the legislature could

have intended the word "primary" to mean something entirely different than what Plaintiff is suggesting.

The shortfall example comports well with the disputed liability provision the legislature adopted in §31A-22-305(2)(c). In that section, if a third party liability carrier disputes liability for more than 60 days, then the vehicle becomes "uninsured" for purposes of the statute. The insurer of the owner or operator will then have to provide "primary" uninsured motorist coverage. This "primary" obligation on the part of the operator's insurer does not mean that such an insurer is "secondary" when liability is disputed. The operator's insurer has no liability, "secondary," "excess," or otherwise for uninsured motorist coverage until the specific statutory trigger of a 61 day dispute is met and the vehicle is deemed uninsured.

Likewise, under §31A-22-305(2)(d), a vehicle becomes "uninsured" under the statute if the insurer of an insured vehicle is found insolvent by a court of competent jurisdiction. Again, the owner's or operator's insurer will step in and pay "primary" uninsured motorist coverage. The legislature could easily have been considering such scenarios when it referred to "primary coverage" in §31A-22-314(1), without intending that rental agencies assume "secondary" or, in the alternative, UIM-like obligations.

These examples provide rational and reasonable explanations for why the legislature used the word "primary" in the statute. Thus, contrary to Plaintiff's position, there are other reasons why the legislature may have used the word "primary" in the statute that have nothing to do with providing "secondary" of "excess" coverage. This being the case, the word "primary" was not overlooked or ignored by Enterprise or by the trial court; rather the lower court and Enterprise were simply unwilling to add language to this statute and attached different meanings to the word "primary".

Plaintiff also argued (for the first time on appeal) that if the legislature were attempting to draft an "escape clause", they would have drafted it using language similar to §31A-22-303(2)(a)(iii) and (iv). In other words, because the legislature did not employ the specific language in §§31A-22-303(2)(a)(iii) and (iv) then this provision must not be an "escape clause". There are several flaws with this reasoning.

First, Plaintiff has not provided any definition for the term "escape clause". Notwithstanding this omission, the plain language of this provision is clearly intended to either relieve or strictly limit the liability of rental companies when there is other valid and collectible insurance. Thus, the provision is clearly an "escape clause" because it is relieving or limiting companies from providing coverage under certain circumstances.

Second, simply because the legislature used different language in §31A-22-314(1) does not mean that it is not an "escape clause". There is no rule that requires the legislature to use the exact same language in every "escape" provision. The plain import of §31A-22-314(1) is that rental companies have no obligation to provide coverage under certain circumstances -- whatever words were employed by the legislature, that meaning cannot be escaped. In sum, the fact that the legislature used different language does not prove that the legislature did not intend to provide an "escape" for rental companies under these set of facts.

Enterprise does not dispute that Utah law applies; in fact, this was conceded to the trial court. Regarding Point I of Plaintiff's brief, that argument is addressed by the arguments above. That is, if the language is interpreted as suggested by Enterprise, then §31A-22-314(1) carves out an exception to the requirements found in §41-12a-301(2)(A). Thus, whether Mr. Li is an insured under the code is not relevant because §31A-22-314(1) provides an exception to coverage. Similarly,

Plaintiff's Point III is addressed by the arguments above. If there is no obligation to provide insurance because of this statutory exception, then Enterprise has no obligation at all to pay Mr. Li.

VIII. CONCLUSION

In sum, the plain language of §31A-22-314(1) relieves Enterprise from providing coverage to the Estate of Mr. Li in this case because there was "other valid or collectible insurance" available to him at the time of loss. This statute is clear on its face. Defendant/Appellee requests that this court affirm the trial court's finding and vacate this appeal.

No Addendum in required under URAP 24(A)(11).

Defendant/Appellee should be awarded his costs for this appeal.

DATED this 5th day of May, 2004.

BRUCE C. BURT
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2004, two true and correct copies of the foregoing BRIEF OF APPELLEE ENTERPRISE RENT-A-CAR were mailed, postage prepaid, to the following:

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